IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6371 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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RAJU ALIAS SANTOSH MAGANLAL JAGIYA - Petitioner(s)
Versus
NEETABEN JAYANTILAL LODIYA - Respondent(s)

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Appearance :
MR. R.N.DHOTRA for MR.B K.RAJ for Petitioner(s) : 1,
MR NILESH A PANDYA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 18/07/2006

ORAL JUDGMENT

1. By filing instant petition under Article 227 of the Constitution of India, petitioner seeks to challenge the order dated 8.2.2006 recorded below application exh.10 in HMP No. 122 of 2004 by the learned Principal Senior Civil Judge, Surat, by which the application filed under Section 24 of the Hindu Marriage Act, 1955 (“the Act” for short) to receive maintenance pendente lite and expenses of the proceedings has been partly allowed and thereby petitioner is directed to pay Rs.2000/- per month to the Respondent wife from the date of application and also directed to pay Rs.3000/- towards cost of

the petition.

2. This Court has considered the submissions advanced by Mr. R.N.Dhotra, learned advocate of the petitioner and Mr. Nilesh Pandya, learned advocate for the Respondent and perused the impugned order and the averments made in the application.

3. So far as the factual matrix of the case is concerned, there is no dispute that the petitioner and respondent are husband and wife and their marriage has been solemnized as per the Hindu rites and customs. Thereafter they are residing separately. Therefore the petitioner has filed application under Section 9 of the Act seeking restitution of conjugal rights during the pendency of the application. During the pendency of the application, Respondent wife has filed application under Section 24 of the Act claiming maintenance pendente lite and expenses of the proceedings. The learned trial Judge has allowed the application in part and directed the Petitioner to pay Rs.2000/- per month to the Respondent Wife from the date of application and the petitioner was also directed to pay Rs.3000/- for the expenses of the proceedings, which has given rise to the present petition.

4. On perusal of the impugned order, it is seen that neither of the parties has produced any oral or documentary evidence with regard to the income of the petitioner. According to the

Respondent – wife, the petitioner is engaged in silver business whereas according to the petitioner he is only doing casual labour work. It is true that the Learned trial Judge has not recorded any finding with regard to the income of the petitioner. However, according to this Court, petitioner being the husband, is bound to maintain his wife even during the pendency of the petition, and therefore, if the petitioner is directed to pay Rs.1000/- instead of Rs.2000/- per month, together with Rs.2000/- for the expenses of the proceedings, to his wife from the date of filing of the application till the proceedings are concluded, the same would meet the ends of justice.

5. Seen in the above context, this petition deserves to be allowed in part by modifying the order to the aforementioned extent.

6. For the foregoing reasons, the petition succeeds in part and accordingly it is partly allowed with no order as to costs. The order dated 8.2.2006 recorded below application exh.10 in HMP No. 122 of 2004 by the learned Principal Senior Civil Judge, Surat, is hereby modified by directing the Petitioner to pay Rs.1000/- instead of Rs.2000/- to the Respondent wife from the date of application till the proceedings are concluded. The Petitioner is also directed to pay Rs.2000/- instead of Rs. 3000/- for the expenses of the proceedings.

7. The amount of Rs.20,000/- as well as amount of

Rs.2000/- deposited by the Petitioner with the registry of this Court, pursuant to the direction issued by this Court vide order dated 26.6.2006, shall be transmitted to the trial Court, i.e. to the learned Principal Senior Civil Judge, Surat, who shall permit the Respondent – wife to withdraw the said amount unconditionally. The Petitioner is directed to deposit Rs.1000/- every month till the proceedings are concluded.

8. Rule is made absolute to the aforesaid extent.

9. The trial Court is directed to expedite the proceedings.

Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*